IN THE UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF TEXAS DALLAS DIVISION

LISA MOATS, Derivatively on Behalf of	§	
Nominal Defendant ODYSSEY	§	
HEALTHCARE, INC.,	§	
	§	
Plaintiff,	§	
	§	
v.	§	
	§	
RICHARD R. BURNHAM, DOUGLAS	§	Civil Action No. 3:05-CV-1803-N
B. CANNON, JOHN K. CARLYLE,	§	ECF
DAVID W. CROSS, PAUL J.	§	
FELDSTEIN, DAVID C. GASMIRE,	§	
DEBORAH A. HOFFPAUIR, MARTIN	§	
S. RASH, SHAWN S. SCHABEL,	§	
and DAVID L. STEFFY,	§	
	§	
Defendants,	§	
,	§	
and	§	
	§	
ODYSSEY HEALTHCARE, INC.,	§	
- , - ,	§	
Nominal Defendant.	ş	
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JOINT MOTION TO DISMISS

Plaintiff Lisa Moats; Individual Defendants Richard R. Burnham, Douglas B. Cannon, John K. Carlyle, David W. Cross, Paul J. Feldstein, David C. Gasmire, Deborah A. Hoffpauir, Martin S. Rash, Shawn S. Schabel, and David L. Steffy; and Nominal Defendant Odyssey Healthcare, Inc., hereby jointly move this Court to dismiss the above-captioned action. The parties do not make this request based upon a settlement or any other agreement. Instead, after taking into account various developments that have transpired since Plaintiff Moats first made demand upon the Board of Directors of Odyssey – including, but not limited to, this Court's dismissal with prejudice of the complaint in *In Re Odyssey Healthcare Inc. Securities Litigation*,

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Civil Action No. 3:04-CV-0844-N, and the resolution of a Department of Justice investigation, both of which addressed matters also addressed in Plaintiff's demand – Plaintiff has determined unilaterally to withdraw her demand upon Odyssey's Board of Directors, and to seek dismissal of this action. Neither Plaintiff nor her counsel will receive any consideration or compensation whatsoever in connection with the dismissal of this matter.

WHEREFORE, all parties to the above-captioned case respectfully and jointly pray that this Court approve the dismissal of this action pursuant to FED. R. CIV. P. 23.1, and that it enter final judgment dismissing this action, with each party to bear his, her, or its own costs.

Respectfully submitted,

VIAL, HAMILTON, KOCH & KNOX, LLP

VINSON & ELKINS L.L.P.

/s/ Mark W. Romney

Mark W. Romney State Bar No. 17225750 1700 Pacific Avenue, Suite 2800 Dallas, Texas 75201 Telephone: (214) 712-4526 Facsimile: (214) 712-4402

SCHIFFRIN & BARROWAY, LLP

Eric L. Zagar 280 King of Prussia Road Radnor, PA 19087 Telephone: (610) 667-7706 Facsimile: (610) 667-7056

ATTORNEYS FOR PLAINTIFF LISA MOATS

/s/ Karen L. Hirschman Karen L. Hirschman State Bar No. 09721500 Trammell Crow Center 2001 Ross Avenue, Suite 3700 Dallas, Texas 75201 Telephone: (214) 220-7700 Facsimile: (214) 220-7716

-and-

Kenneth P. Held State Bar No. 24030333 First City Tower 1001 Fannin Street, Suite 2300 Houston, Texas 77002 Telephone: (713) 758-2222 Facsimile: (713) 758-2346

ATTORNEYS FOR DEFENDANTS RICHARD R. BURNHAM, DOUGLAS B. CANNON, JOHN K. CARLYLE, DAVID W. CROSS, PAUL J. FELDSTEIN, DAVID C. GASMIRE, DEBORAH A. HOFFPAUIR, MARTIN S. RASH, SHAWN S. SCHABEL, and DAVID L. STEFFY

CARRINGTON, COLEMAN, SLOMAN & BLUMENTHAL, L.L.P.

/s/ Ken Carroll

Ken Carroll State Bar No. 03888500 David S. Coale State Bar No. 00787255 Todd A. Murray State Bar No. 00794350 Shelbi Barnhouse State Bar No. 24027276 901 Main Street, Suite 5500 Dallas, Texas 75202 Telephone: (214) 855-3000 Facsimile: (214) 855-1333

ATTORNEYS FOR NOMINAL DEFENDANT ODYSSEY HEALTHCARE, INC.